

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The Department has determined that such services are not covered under Medicaid (see *infra*). Therefore, the Department reviewed the petitioner's request under M108 criteria.

3. The only medical evidence that was initially submitted in connection with the claim was a statement on the M108 request form from the naturopathic doctor who had performed the service. On the form he indicated: "The lab allowed us to see clear imbalances in his neurotransmitters, which allows for therapy with targeted amino acids. These imbalances can cause ADHD and behavioral problems. (He) tested allergic to dairy, eggs, and gluten which can cause symptoms of ADHD."

4. In response to the section on the form regarding serious detrimental health consequences the naturopath wrote: "Had we not tested for these allergens, continual consumption of these foods can continue to trigger adverse symptoms of the nervous system and brain function. We would see a worsening of hyperactivity as well as decreased ability to focus/concentrate and mood instability. Also proper balancing of the neurotransmitters is essential for sustained wellness, without the need for harmful medication due to adverse side effects. Without these services, the root cause of (son's) illness would not be addressed leading to a worsening of all his symptoms including hyperactivity, depression and heightened anger."

5. The only other medical evidence in the record is November 2005 office notes from a physician that describe the parent's beliefs and their refusal to consider traditional medical treatment and medications. The notes include the statement: "We are going to lose him from medical care if we demand that he be on medication."

6. In a letter to the hearing officer dated January 21, 2008 the petitioner's son's mother indicated that her son is in state custody and that OVHA has not provided them with "new leads" in obtaining care for their son other than traditional pediatricians and allergists, which OVHA has confirmed are covered under Medicaid, but which it appears the parents reject as a matter of personal experience and belief.

ORDER

The Department's decisions is affirmed.

REASONS

Section M610 of the Medicaid regulations includes the provision: "Covered physician services are those provided by an M.D. or D.O. when medically necessary and performed within the scope of their licenses." The petitioner argues that this provision conflicts with state statutes governing "health insurers" regulated by the Vermont Department of Banking, Insurance, Securities & Health Care Administration (BISHCA). The petitioners point to language in those statutes that requires the inclusion of naturopathic physicians in any "health insurance plan" offered by a "health insurer" as defined by 18 V.S.A. § 9402. The petitioners point to language in 18 V.S.A. § 9402(7) that defines "health insurer" to include a "publicly funded health care benefit plan offered by public and private entities". The petitioners argue that this definition includes Medicaid and VHAP.

The Department concedes that naturopathic physicians (ND's) are certified by the state and are therefore included under the BISHCA definition of "health care providers". Id. § 9402(6). statutes. However, the Department argues that the above statutes do not include Medicaid and VHAP. This is evident from another Vermont statute, 33 V.S.A. § 1901, that

specifically designates the Secretary of the Agency of Human Services as the administrator of the state's Medicaid program. In further support of its position the Department points to other statutory provisions that clearly demonstrate the legislature's recognition and distinction between Medicaid/VHAP and other health care "insurers" and "plans".¹

Moreover, the Department cites pending legislation that *amends* existing legislation (8 V.S.A. § 4088d[b]) that requires insurance coverage for naturopathic providers to doctors to specifically include Medicaid and VHAP. See S.257. The Department represents that it supports this legislation, but that it has not yet become law. Despite the petitioner's argument that S.257 is "redundant", it is beyond argument that the Medicaid program, as a general matter, is not included in the present BISHCA definitions of health care "plans" and "insurers".²

As noted above, naturopathic physicians are not presently included under Medicaid regulations. However, OVHA has a procedure for requesting exceptions to any non-

¹ See e.g., 8 V.S.A. § 4089w (which creates the office of health care ombudsman and specifically includes "Medicaid" in the definition of "health insurance plan" for purposes of that statute) and 8 V.S.A. § 4088b (which specifically includes the Medicaid program in coverage of clinical trials for cancer patients).

² It is clear that the term "public entity" in the BISHCA statutes refers to state and local funding of insurance plans for their public *employees*.

coverage, which requires recipients to provide information about their situation and supporting documentation. M108.

OVHA must then review the information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?

10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. See, e.g., Fair Hearing No. 20,275.

As noted above, other than the petitioner's apparently sincere and adamant mistrust of traditional medicine and practitioners, there is simply no evidence whatsoever that the denial of naturopathic services, in and of itself, has resulted or will result in serious detrimental health consequences for his son. Hopefully, the petitioner will soon be able to obtain Medicaid coverage for these services under S257.³ Until then, however, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that these services are medically necessary to avoid a worsening or lack of improvement in either his son's physical or mental health.

³ The Department represents that S257 became law in early March 2008.

In light of the above, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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